

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

AARON WILSON GARNER, et al	§	
	§	
VS.	§	C.A. NO. G-07-221
	§	
BP PRODUCTS NORTH AMERICA, INC.	§	JURY TRIAL DEMANDED
	§	

**TRIAL PLAINTIFFS' REPLY BRIEF IN SUPPORT OF
THEIR MOTION FOR CLARIFICATION**

Trial Plaintiffs Gilbert Cantu, Rosa Fernandez (f/k/a Rosa Claudio), Jose A. Estrada, Gregorio Fuentes, Eleno Guerra, Wayne Jefferson, Willy Mays, Edwin Munoz, Wayne Pearson, and Charles Taylor (collectively, "Trial Plaintiffs") respectfully submit this reply brief in support of their Motion for Clarification (Docket Entry No. 321).

Contrary to BP's claim that severance is purely a state court matter, the Federal Rules of Civil Procedure specifically provide for severance of separate into a separate suit. FED. R. CIV. 21.

Again, BP did not oppose Trial Plaintiffs' Motion for Severance (Docket Entry No. 285) despite filing numerous and voluminous pleadings in response to the related issue of entry of judgment. In its response to the Motion for Clarification, BP provides no reason for its previous non-opposition and or why it now apparently opposes severance. At most, one can read BP's response as conceding that severance is permissible.

BP's only apparent reason for opposing severance (if BP does truly oppose) is that there will be time and costs associated with copying the file for a newly created cause. However, in these days of electronic filing and storage, that is not truly a concern. Presumably, BP's new

appellate experts know this full well, which raises red flags about what is really going on behind the scenes here.

The fact that BP is no apparently changing its tune on severance—and offering an extremely weak basis to do so—suggests that BP will take the position that, when the parties appeal the Trial Plaintiffs' judgment, it will serve to effectively stay the remainder of the case. Trial Plaintiffs find no authority for this, and perhaps BP will agree that they will not take this position.

Either way, the safest and cleanest way to ensure that there are no further legal squabbles about this issue is for the Court to sever the Trial Plaintiffs' claims into a new civil action, with its own separate judgment. That judgment can be appealed and the parties and Court can address the other plaintiffs' claims.

CONCLUSION AND PRAYER

Wherefore, Trial Plaintiffs respectfully request that the Court grant their motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document will be served or has been served on all interested parties in accordance with the Federal Rules of Civil Procedure on April 7, 2010. Service on E-Filing Users will be automatically accomplished through the Notice of Electronic Filing; non-Filing Users will be served by certified mail, return receipt requested and/or via facsimile.

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